

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH SAM,

Defendant.

CASE NO. CR19-0115-JCC

ORDER

This matter comes before the Court on Defendant Joseph Sam's motion to suppress physical evidence (Dkt. No. 49). Having considered the parties' briefing and the relevant record, the Court hereby finds oral argument unnecessary and DENIES the motion for the reasons explained herein.

I. BACKGROUND

Defendant Joseph Sam has been indicted and charged with conspiracy to commit robbery, robbery, and assault resulting in serious bodily injury. (Dkt. No. 49 at 1.) These charges stem from an alleged assault and robbery of victim John Doe. (*Id.*) According to Mr. Doe's statement to Tulalip Tribal Police, Mr. Doe is a heroin dealer who was attempting to complete a transaction with his ex-girlfriend Mariah Bourdieu. (*Id.* at 2.) To conduct the transaction, Mr. Doe went to the apartment of Co-Defendant Dennis Peltier on February 6, 2019. (*Id.*) Shortly after Mr. Doe arrived at the apartment, Mr. Peltier and Ms. Bourdieu were allegedly joined by a

1 third individual (disguised and in possession of a gun), whom the government claims to be Mr.
2 Sam. (Dkt. No. 60 at 3.) The three individuals then attempted to rob Mr. Doe of his money and
3 drugs. (*Id.* at 2.) Mr. Doe tried to flee through the front door, but he was shot in the back and
4 subsequently paralyzed in his lower body. (Dkt. Nos. 49 at 2 and 60 at 2.)

5 The following day, Tulalip police obtained a search warrant for Mr. Peltier's apartment,
6 where they found evidence connecting Mr. Peltier and Ms. Bourdieu to the alleged robbery.
7 (Dkt. No. 49 at 2.) Based on that evidence, the police arrested Mr. Peltier the next day. (*Id.*)
8 After being arrested, Mr. Peltier told the police that Ms. Bourdieu planned the robbery and that
9 the third individual was unknown to him but was called "Strap" by Ms. Bourdieu. (*Id.*) The
10 police subsequently arrested Ms. Bourdieu on February 12, 2019, and she immediately
11 exercised her right to remain silent. (*Id.*)

12 Tribal Detective Sallee used his police Facebook account to locate a common Facebook
13 friend between Mr. Peltier and Ms. Bourdieu (referred to as the "Streezy NW" account). (*Id.* at
14 2–3.) The common account had posts indicating that the account's user went by the nickname
15 "Strap." (*Id.*) The account also had pictures of an adult male whom Tulalip police were able to
16 identify as Joseph Sam based on tattoos in the pictures. (Dkt. No. 60 at 3.) Additional witness
17 testimony provided corroborating evidence that the Streezy NW account allegedly belonged to
18 Mr. Sam. (*Id.*) On this information, the Honorable Mary Alice Theiler, United States Magistrate
19 Judge, issued Detective Sallee a search warrant for Mr. Peltier's and Ms. Bourdieu's Facebook
20 accounts. (*Id.*) Detective Sallee uncovered messages exchanged between Ms. Bourdieu and the
21 Streezy NW account user starting in July 2018. (Dkt. No. 49 at 3.) In those messages, Ms.
22 Bourdieu and Streezy NW, whom Ms. Bourdieu referred to as "Strap," discussed narcotics
23 trafficking. (Dkt. No. 60 at 3.) In messages dated February 6, 2019, Ms. Bourdieu asked Streezy
24 NW to help her with a robbery. (*Id.*) Ms. Bourdieu also tried to recruit another Facebook user,
25 "Captain Kachuckles," to help with the robbery. (*Id.*)

26 Mr. Sam was arrested on May 15, 2019. (*Id.*) Upon arrest, Mr. Sam waived his *Miranda*

1 rights, denied involvement in the robbery and assault, stated he was in Bellingham at the time,
2 claimed he has been mistakenly identified before, and insisted that the Streezy NW account must
3 have been created by someone else pretending to be him and possibly trying to implicate him in
4 the crimes. (*Id.* at 3–4.)

5 On May 22, 2019, agents for the Federal Bureau of Investigation applied for a search
6 warrant covering the Streezy NW and Captain Kachuckles Facebook accounts. (*Id.* at 4.) To
7 support their application, the agents “attached . . . and incorporated” the affidavit of FBI Special
8 Agent Matthew McElhiney, which exhaustively described why the FBI believed that the owners
9 of both accounts were involved in the alleged robbery of Mr. Doe. (*See id.* at 4, 9–29.) After
10 reviewing the application, the Honorable Michelle L. Peterson, United States Magistrate Judge,
11 issued a search warrant. (*Id.* at 4.) The warrant limited the search of the “Captain Kachuckles”
12 account to information for the time period of January 1, 2019, to the present; the warrant did not
13 provide similar temporal limitations for the Streezy NW account. (Dkt. No. 60-1 at 3.) The
14 warrant limited the information to be seized to “fruits, contraband, evidence and
15 instrumentalities” of specified crimes stemming from the alleged robbery, and it identified seven
16 categories of data that might fall within the warrant’s scope. (*Id.* at 6.) The warrant also
17 described the procedure for obtaining the Facebook data and how and by whom the data will be
18 sorted to identify items that comply with the warrant for seizure. (*Id.* at 27–28.)

19 In response to the warrant, Facebook disclosed 16,544 pages of data pertaining to the
20 Streezy NW account to the FBI since the account’s opening in 2010. (Dkt. Nos. 60 at 5, 49 at 4.)
21 Special Agent McElhiney subsequently reviewed the data for information relevant to the
22 investigation. (Dkt. No. 60 at 5.) In accordance with the parameters in the warrant, Special Agent
23 McElhiney seized 1,934 pages of the 16,544 pages that Facebook initially disclosed. (*Id.*) Mr.
24 Sam now moves to suppress the evidence seized during this search on the basis that the warrant
25 for the “Streezy NW” account was overbroad. (Dkt. No. 49 at 1.)

26 II. DISCUSSION

1 “The Fourth Amendment was designed to prevent law enforcement officers from
2 engaging in ‘general exploratory searches.’” *United States v. Shi*, 525 F.3d 709, 731 (9th Cir.
3 2008). To achieve that goal, the Fourth Amendment imposes several requirements on a search
4 warrant. *United States v. Flores*, 802 F.3d 1028, 1045 (9th Cir. 2015); *United States v. Adjani*,
5 542 F.3d 1140, 1148–50 (9th Cir. 2006); *United States v. Kow*, 58 F.3d 423, 427 (9th Cir. 1995).
6 One of those requirements is that a warrant must not be overbroad. *Shi*, 525 F.3d at 731–32. In
7 analyzing whether a warrant is overbroad, the Ninth Circuit considers three factors: (1) whether
8 probable cause exists for seizure of all items described in the warrant; (2) if there are objective
9 standards in the warrant that allow officers to distinguish between items subject to seizure from
10 items not subject to seizure; and (3) whether the items described in the warrant could be
11 described with more particularity considering the information available. *Shi*, 525 F.3d at 731–32.

12 Here, the warrant is not overbroad under the first two factors of the test for overbreadth.
13 First, the record shows—and Mr. Sam does not contest—that law enforcement had probable
14 cause to search the Streezy NW Facebook account based on the testimony and evidence gathered
15 during the investigation and arrest of Mr. Peltier and Ms. Bourdieu. (Dkt. No. 60-1 at 14–17.)
16 Second, the warrant contained objective standards to guide the search, as it limited the search to
17 evidence of specific crimes and offered detailed examples of information that might constitute
18 evidence of those crimes. (*Id.* at 6.) These objective standards significantly limited the
19 information officers could seize from the Streezy NW account.

20 Despite these limiting standards, Mr. Sam argues that the warrant for the Streezy NW
21 account should have had a temporal limit and should not have allowed the police to search
22 information going back to the opening of the account in January 2010. (Dkt. No. 49 at 4.)
23 However, the police needed to search that information because, as Special Agent McElhiney
24 explained in his affidavit attached to the warrant,¹ Mr. Sam told police that the account was

25 ¹ Mr. Sam argues that the reason for conducting a search of the Streezy NW account was not
26 included in the warrant. (*See* Dkt. No. 62 at 5.) This is simply not true. The warrant expressly
incorporated the affidavit of FBI Special Agent Matthew McElhiney. (*See* Dkt. No. 60-1 at 2.)

1 created to frame him and because information from the opening of the account would help the
2 police establish the truth or falsity of Mr. Sam’s assertion. (Dkt. No. 60 at 4.) Thus, temporal
3 restrictions were not required in this case. *See Flores*, 803 F.3d at 1045. Indeed, such restrictions
4 would have undermined the FBI’s ability to link Mr. Sam to the Streezy NW account and, in
5 turn, the alleged robbery.

6 Mr. Sam also argues that the warrant should have required the FBI to use a filter team—
7 non-investigatory agents—when searching the Streezy NW account for information that fell
8 within the warrant’s scope. (Dkt. No. 49 at 3.) However, the Ninth Circuit has never held that a
9 filter team is constitutionally required or that a warrant is overbroad because it does not require
10 the use of a filter team. *See Flores*, 802 F.3d at 1045 n.22. The idea of requiring a filter team first
11 appears in a concurrence in *United States v. Comprehensive Drug Testing, Inc.*, 513 F.3d 1085
12 (9th Cir. 2008) (“*CDT*”) (Kozinski, C.J., concurring). The concurrence offered “no legal
13 authority for its proposal requiring the segregation of computer data by specialized personnel,”
14 *id.* at 1184 (Callahan, C.J., concurring), and it described that proposal as “guidance,” *id.* at 1178
15 (Kozinski, C.J., concurring). Since that guidance was articulated, the Ninth Circuit has approved
16 a search that did not use a filter team, noting that “*CDT* did not prohibit investigative teams from
17 participating in data segregation as a general matter . . . and instead faulted the government for
18 misleadingly suggesting in the warrant that the team would not be involved.” *Flores*, 802 F.3d at
19 1045 n.22. Absent a Ninth Circuit case holding that filter teams are constitutionally required and
20 explaining when that might be the case, the Court will not suppress evidence obtained pursuant
21 to an otherwise-valid warrant simply because the warrant did not require the use of a filter team.

22 In sum, the Court finds that the warrant for the Streezy NW account was not overbroad.

23
24 That affidavit explained that while the FBI had probable cause to believe that Mr. Sam owned
25 the Streezy NW account, the FBI needed to look for information proving Mr. Sam’s ownership
26 because Mr. Sam had told police that the account was not his. (Dkt. No. 60-1 at 19.) Thus, the
warrant properly established the basis for the FBI to search information going back to the
opening of the Streezy NW account.

1 The Court therefore DENIES Mr. Sam's motion to suppress.

2 **III. CONCLUSION**

3 For the foregoing reasons, the Court DENIES Defendant's motion to suppress (Dkt. No.
4 49).

5 DATED this 5th day of May 2020.

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9 John C. Coughenour
10 UNITED STATES DISTRICT JUDGE
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